

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAURICE ANTONIO JOLLY,

Defendant.

Case No. 2:18-cr-20699-1

HONORABLE STEPHEN J. MURPHY, III

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS [24]

On October 25, 2018, Defendant Maurice Jolly was charged in a superseding indictment with one count of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). ECF 16. On February 22, 2019, Defendant filed a motion "to suppress all evidence, statements, and fruits obtained during and as a result of the unlawful stop and search that occurred on September 18, 2018." ECF 24, PgID 55. The Government responded in opposition and Defendant filed a reply. ECF 26, 27. The Court held an evidentiary hearing on May 1, 2019, which was continued on May 21, 2019. *See* ECF 28, 30. The parties filed supplemental briefs on June 3, 2019. ECF 31, 32. For the reasons below, the Court will deny the motion.

BACKGROUND

On September 18, 2018, City of Detroit police officers approached Defendant, who was parked on the side of a residential street in Detroit. The officers conducted a search of his vehicle and found contraband, including a firearm. The parties dispute the legality of the officers' search.

On May 1, 2019, Officer Eric Maxwell testified for the Government. Officer Maxwell testified that on September 18, 2018, at approximately 3:20 p.m. he was working in a fully marked patrol car with his partner, Officer Brooks. ECF 28, Pg ID 84. Officer Leo Rhodes, who was working undercover and in conjunction with Officers Maxwell and Brooks, informed the uniformed officers that a citizen was parked in a Tahoe packaging marijuana. *Id.* at 85, 87. Officer Maxwell drove to the location provided by Officer Rhodes—2224 Euclid, Detroit. *Id.* at 86–87. Officer Maxwell observed that the Tahoe was improperly parked—more than 12 inches from the curb. *Id.* at 88. Officer Maxwell then parked the patrol car and began a traffic stop of the Tahoe. *Id.* at 89.

Officer Maxwell approached the passenger's side of the Tahoe¹ and observed an unknown individual talking to the driver, Defendant, from the passenger side. *Id.* at 100. Officer Maxwell testified that as he walked up to the vehicle he could "smell the odor of marijuana coming from the vehicle and also observed another bag of marijuana sitting on the front passenger's side [of the Tahoe]." *Id.* at 90. Officer Maxwell ordered Defendant out of the vehicle, detained him, and searched him. *Id.* at 93–94. Officer Maxwell searched the Tahoe while Officer Brooks remained outside the vehicle. *Id.* at 94.

Officer Maxwell noted that the vehicle's cupholder was disturbed. *Id.* He had seen this numerous times and in his experience "[a]lways it's contraband or firearms

¹ Maxwell originally testified that he approached the driver's side of the Tahoe. ECF 28, PgID 89. But he corrected his testimony on redirect after his report refreshed his memory. *See id.* at 100.

always in that compartment." *Id.* at 95. Officer Maxwell pulled up the cupholder and observed a clear mason jar—filled with colorful pills and marijuana—and a loaded semiautomatic handgun. *Id.* at 95–96. He also recovered a digital scale from the glovebox of the Tahoe. *Id.* at 97. Officer Maxwell testified he does not believe that he had his body camera on at the time he searched the vehicle, but there is video that includes a reenactment. *Id.* at 98.² Officer Maxwell was cross-examined by defense counsel on May 21, 2019 and shown the video that was taken on September 18, 2018. *See* ECF 30, PgID 132. He testified after reviewing the video, consistent with his earlier testimony, that Defendant's vehicle was parked more than 12 inches from the curb. *Id.* at 136.

Officer Maxwell testified that Defendant was detained because Maxwell's "partner informed [him] that he [saw] marijuana inside the vehicle, someone packaging marijuana inside the vehicle" and that "when [Maxwell] arrived to the vehicle, [he] smelled the odor of marijuana. [He saw] the marijuana on the seat." *Id.* at 142. Officer Maxwell further testified that when he arrived at the location where Defendant was parked, he "observed that the vehicle was parked more than 12 inches from the curb. [He] walk[ed] up to the vehicle, [he] smell[ed] the odor of marijuana coming from the vehicle. As [he] looked inside the vehicle, [he saw] that [it was]

² The video reenactment shows Officer Maxwell leaning into the vehicle from the driver's side, pulling up the cupholder compartment and pulling out from the center console a mason jar, which Maxwell stated contained "marijuana and other narcotics." It also shows that he retrieved a Springfield handgun from further inside the center console. Video ERICMAXWELL040, September 18, 2018 15:25:09–15:26:10.

occupied by a driver and [he saw] [there was] marijuana inside the seat, front passenger seat." *Id.* at 143.

Officer Leo Rhodes testified that he has been a Detroit police officer for 24 years and was doing surveillance in plain clothes and an unmarked car on September 18, 2018. *Id.* at 146. On that day, he witnessed a black male in the driver's seat of a Tahoe with an open driver's-side window on Euclid Street putting marijuana in a baggy. *Id.* at 147–48, 157. Although he could not see the substance the male was handling, he testified that, from his experience as a police officer, he recognized the man's motion as indicative of packaging marijuana. *Id.* at 148. Rhodes then parked close enough to the vehicle to observe the individual packaging marijuana, informed other police officers over the radio about the suspected marijuana packaging, and then saw another individual approach the passenger's side of the car. *Id.* at 149.

The Defense called Neal Roberts, an investigator for the Federal Community Defender's Office. *Id.* at 162. Investigator Roberts testified that as part of his investigation, he learned that the distance from the ground to the bottom of the Tahoe's window was fifty-three inches and that the distance from the ground to the roof of the Tahoe was seventy-six inches. *Id.* at 162–63.

LEGAL STANDARD

"[A] police officer lawfully may stop a car when he has probable cause to believe that a civil traffic violation has occurred, or reasonable suspicion of an ongoing crime." *United States v. Jackson*, 682 F.3d 448, 453 (6th Cir. 2012) (citing *United States v. Blair*, 524 F.3d 740, 748 (6th Cir. 2008)). "Under the automobile

exception to the warrant requirement, an officer may perform a warrantless search of a detained vehicle should the officer have probable cause to believe the vehicle contains contraband or evidence of criminal activity." *United States v. Lyons*, 687 F.3d 754, 770 (6th Cir. 2012) (citation omitted).

Probable cause requires an officer to identify "specific and articulable facts which, taken together with rational inferences," reasonably justify the search. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). A search is unlawful and evidence from the search must be suppressed when the search is conducted without probable cause. *See Wong Sun v. United States*, 371 U.S. 471, 484–85 (1963).

Law enforcement with reasonable suspicion can conduct a *Terry* stop to detain a person "briefly in order to 'investigate the circumstances that provoke suspicion.'" *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975)). "[T]o make an investigative *Terry* stop without a warrant, an officer must have reasonable articulable suspicion that 'the person apprehended is committing or has committed a criminal offense.'" *United States v. Galaviz*, 645 F.3d 347, 352–53 (6th Cir. 2011) (quoting *Arizona v. Johnson*, 555 U.S. 323, 326 (2009)). An officer is entitled to draw "specific reasonable inferences . . . from the facts in light of his experience." *Terry*, 392 U.S. at 27. "A pattern of suspicious behavior need only be recognizable by [a person] versed in the field of law enforcement." *United States v. Knox*, 839 F.2d 285, 290 (6th Cir. 1988) (citation and internal quotations omitted).

DISCUSSION

The Government argues that the officers had probable cause because surveillance officers witnessed Defendant packaging marijuana and "[t]he collective knowledge of agents working as a team is to be considered together in determining probable cause." ECF 26, PgID 67 (quoting *United States v. Woods*, 544 F.2d 242, 259–60 (6th Cir. 1976)). The Government argues that even without the collective-knowledge doctrine, the officers had probable cause for the traffic stop and detention based on witnessing a civil traffic infraction, finding marijuana in plain view, and the automobile exception to the warrant requirement.

Defendant asserts that inconsistencies in the officers' testimony demonstrate that the police lacked reasonable suspicion to effect the traffic stop of Defendant's vehicle, that there was no probable cause to believe Defendant committed a civil traffic infraction, and that police lacked probable cause to arrest Defendant. ECF 32, PgID 203. Defendant's claims are not supported by the evidence. Defendant takes issue with Officer Rhodes's testimony that he could see the driver of the Tahoe packaging what he believed to be marijuana. Defendant questions the veracity of Officer Rhodes's testimony "given the proximity of the driver of a standard vehicle passing an SUV with 1) tinted back windows that were up at the time and 2) 22 inch rims which cause the vehicle to be elevated past the roof line of the standard car the officer was riding in." *Id.* at 205. But as Defendant's investigator admitted on cross-examination, whether someone could observe an individual packaging

marijuana inside the Tahoe would depend on a number of factors, including the height at which the bag was being held. ECF 30, PgID 166–68.

Defendant also asserts that the officers' "claims about being able to observe the marijuana in plain view are not credible." ECF 32, PgID 209. Defendant relies on the lack of video evidence and on minor inconsistencies in Officer Maxwell's testimony about (1) which side of the vehicle he approached when he initially encountered the Tahoe in September 2018 and (2) whether he placed Defendant or the person standing near Defendant's vehicle in handcuffs. *Id.* at 209–10. But Officer Maxwell was forthright about his lapse in memory, noting that this event occurred a year ago, and stated "I don't remember how it all played out, ma'am. I just know—like I say, I didn't even remember I went to the passenger's side first, but I do remember after we detained [the person standing outside Defendant's vehicle], I know we did detain [Defendant] as well." ECF 30, PgID 129, 137. Although Officer Maxwell was not wearing his body cam when he initially searched the car, he provided a reenactment on video after discovering the contraband hidden beneath the vehicle's cupholder. *Id.* at 139. Officer Maxwell's testimony—that he both smelled marijuana coming from the vehicle and saw it on the passenger's seat—was credible and supported by a police report drafted on September 18, 2018, ECF 31-1 PgID 187.

Defendant next claims that even if the arresting officer did observe marijuana in plain view, "this is insufficient information to support a finding of probable cause to believe [Defendant] committed a crime" because "[p]ossession of marijuana was

lawful for any person who possessed a valid Michigan Medical Marijuana Card." ECF 32, PgID 210. Defendant does not cite any legal authority to support the proposition. *Cf. United States v. Carpenter*, Case No. CR 09–312–VBF, 2010 WL 11545073, at *2 (C.D. Cal. Jan. 13, 2010) ("[A] claim of medical marijuana does not negate probable cause.").

Defendant next asserts, again without any supporting citation, that "the height of the vehicle and [the marijuana's] alleged location on the passenger seat indicate that it would not have been possible to observe the marijuana until after the doors of the vehicle were opened." ECF 32, PgID 210. But Officer Rhodes witnessed that the driver's window was down and Defendant was holding "something in a bag and sprinkling something into a bag." ECF 30, PgID 148, 157. Officers Maxwell and Brooks had reasonable suspicion to conduct a stop to investigate Defendant after Officer Rhodes described to them what he had witnessed. "It is well-established that an officer may conduct a stop based on information obtained by fellow officers." *Lyons*, 687 F.3d at 765–66 (citing *United States v. Barnes*, 910 F.2d 1342, 1344 (6th Cir. 1990)).³ Further, once Officer Maxwell smelled the odor of marijuana coming from the Tahoe he had probable cause to believe the vehicle contained contraband or evidence of criminal activity. Maxwell also observed a bag of marijuana in plain view on the passenger seat of the

³ The government argues that the officers also had probable cause to believe a civil infraction had occurred based on Officer Maxwell's testimony that the Tahoe was parked more than twelve inches from the curb. From the video evidence, it is unclear exactly how far the car was parked from the curb. *See* video ERICMAXWELL040, September 18, 2018 at 15:45:55–15:46:01.

Tahoe, which also supports probable cause. The officers therefore had probable cause to search the Tahoe.

ORDER

WHEREFORE, it is hereby **ORDERED** that Defendant's motion to suppress [24] is **DENIED**.

SO ORDERED.

s/ Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: July 31, 2019

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on July 31, 2019, by electronic and/or ordinary mail.

s/ David P. Parker
Case Manager